Bravo Mechanical, Inc. *and* Sheet Metal Workers International Association, Local Union No. 19, AFL–CIO. Case 4–CA–18520

December 21, 1990

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

Upon a charge filed by the Union on December 15, 1989, and amended January 17, 1990, the General Counsel of the National Labor Relations Board issued a complaint on February 28, 1990, against the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent has failed to file an answer.

On October 5, 1990, the General Counsel filed a Motion for Summary Judgment, with exhibits attached.[1] On October 11, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.'' As noted above, the Respondent has failed to file an answer to the complaint, and has failed to file a response to the Notice to Show Cause.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment insofar as the complaint alleges that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging and thereafter failing and refusing to reinstate Howard Stover Sr., Earl Stover, Howard Stover Jr., Bruce Adams, Vincent Bilotta, Pamela Jackson, Mark Stover, Scott Stover, and Frank Wakeling.

The complaint further alleges that these unfair labor practices are so serious and substantial in character that the possibility of erasing the effects of these unfair labor practices and of conducting a fair election by the use of traditional remedies is slight, and that the employees' sentiments regarding representation having been expressed through authorization cards, would, on balance, be protected better by issuance of a bargaining order than by traditional remedies alone. In determining whether a bargaining order is appropriate to remedy an employer's misconduct, the Board examines the nature and pervasiveness of the employer's unfair labor practices. *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969). In weighing a violation's pervasiveness, relevant considerations include ''the number of employees directly affected by the violation, the size of the unit, the extent of dissemination among the work force, and the identity of the perpetrator of the unfair labor practice.'' *Michigan Expediting Service*, 282 NLRB 210, 211 (1986).

The complaint in this case alleges that the Respondent unlawfully discharged nine employees. The complaint further alleges in conclusionary terms that such unfair labor practices preclude the holding of a fair election and that therefore a bargaining order is warranted. Although the unfair labor practices here are serious in nature, the complaint does not allege sufficient facts to enable the Board to evaluate the pervasiveness of the violations. For example, the complaint does not allege the size of the unit or the extent of dissemination, if any, of the violations among the employees not directly affected by them. Accordingly, we deny the General Counsel's Motion for Summary Judgment insofar as it alleges that a bargaining order is appropriate and that the Respondent therefore violated Section 8(a)(5) and (1) of the Act.[2] We shall remand the case for a hearing before an administrative law judge on the issue of whether a bargaining order is an appropriate remedy under the circumstances of this case.[3]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a Pennsylvania corporation engaged in the operation of an HVAC installation and service shop and a sheet metal fabrication shop located in Chester, Pennsylvania. During the year preceding issuance of the complaint, the Respondent, in the course and conduct of its business operations, purchased and

[1] By letter to the Board dated October 9, 1990, and served on the parties, counsel for the General Counsel corrected the Motion for Summary Judgment in the spelling of five of the alleged discriminatees' names and substituted an exhibit indicating the correct date the charge and amended charge were served on the Respondent.

[2] See *Control & Electrical System Specialists*, 299 NLRB No. 92 (Aug. 29, 1990); *Protection Sprinkler Systems*, 295 NLRB 1072 (1989); *Binney's Casting Co*., 285 NLRB 1095 (1987).

[3] The complaint also alleges that on or about December 12, 1989, the Union requested the Respondent to recognize and bargain with it as the exclusive representative of the unit, and that the Respondent on that same date refused to do so. In the absence of an answer, we find these allegations to be admitted. The complaint further alleges that by refusing to recognize and bargain with the Union, the Respondent violated Sec. 8(a)(1) and (5) of the Act. Because this alleged violation is tied to the bargaining order remedy, we shall leave its disposition to the judge.

received at its Chester shop products, goods, and materials valued in excess of $50,000 from other enterprises located within the Commonwealth of Pennsylvania, each of which other enterprises had received the products, goods, and materials directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About the dates listed below, the Respondent discharged the employees named below and at all times since these dates the Respondent has failed and refused to reinstate these employees to their former or substantially equivalent positions of employment:

Howard Stover Sr.	December 11, 1989
Earl Stover	December 11, 1989
Howard Stover Jr.	December 11, 1989
Bruce Adams	December 11, 1989
Vincent Bilotta	December 11, 1989
Pamela Jackson	December 11, 1989
Mark Stover	January 2, 1990
Scott Stover	January 2, 1990
Frank Wakeling	January 2, 1990

The Respondent engaged in, and is engaging in, the conduct described above because its employees supported or assisted the Union.

Accordingly, we find that the Respondent has discriminated, and is discriminating, in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and the Respondent thereby has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

CONCLUSION OF LAW

By discharging on December 11, 1989, and thereafter failing and refusing to reinstate employees Howard Stover Sr., Earl Stover, Howard Stover Jr., Bruce Adams, Vincent Bilotta, and Pamela Jackson; and by discharging on January 2, 1990, and thereafter failing and refusing to reinstate employees Mark Stover, Scott Stover, and Frank Wakeling, the Respondent has engaged in unfair labor practices affecting commerce within the meaning Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(1) and (3) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to offer employees Howard Stover Sr., Earl Stover, Howard Stover Jr., Bruce Adams, Vincent Bilotta, Pamela Jackson, Mark Stover, Scott Stover, and Frank Wakeling immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We also shall order the Respondent to remove from its files any references to the unlawful discharges of the above-named employees and to notify them in writing that this has been done and that the discharges will not be used against them in any way. Finally, as noted above, we shall also remand this case for a hearing on the limited issue of whether a bargaining order is an appropriate remedy under the circumstances of this case.

ORDER

The National Labor Relations Board orders that the Respondent, Bravo Mechanical, Inc., Chester, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging and thereafter failing and refusing to reinstate employees, or otherwise discriminating against employees, because they supported or assisted the Sheet Metal Workers International Association, Local Union No. 19, AFL–CIO.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Howard Stover Sr., Earl Stover, Howard Stover Jr., Bruce Adams, Vincent Bilotta, Pamela Jackson, Mark Stover, Scott Stover, and Frank Wakeling immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(b) Remove from its files any references to the unlawful discharges of the above-named employees and notify them in writing that this has been done and that the discharges will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all

payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Chester, Pennsylvania facility copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for the purpose of holding a hearing before an administrative law judge on the issue of the alleged 8(a)(1) and (5) violation based on the alleged appropriateness of a bargaining order.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge you or otherwise discriminate against you because of your support or assistance to the Sheet Metal Workers International Association, Local Union No. 19, AFL–CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer the following employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings and other benefits resulting from our discrimination against them, with interest.

Howard Stover Sr.	Pamela Jackson
Earl Stover	Mark Stover
Howard Stover Jr.	Scott Stover
Bruce Adams	Frank Wakeling
Vincent Bilotta	

WE WILL notify the above-named employees that we have removed from our files any references to their unlawful discharges and that we will not use the discharges against them in any way.

BRAVO MECHANICAL, INC.